IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.17903 of 1999

Between:

A.S.Narasimham S/o. A.V.Narisimham,
R/o. 7-294, Holmespet Proddatur, Cuddapah District.

..... PETITIONER

AND

1 The Industrial Tribunal-cum-Labour Court,
Anatapur.
2 The President M/s Texmaco Limited Cement Division
Yerragintla 516 309. Cuddapah District.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or writ particularly one in the nature of writ of certiorari or any other appropriate writ calling for the records quash the award I.D.No.238/95 dated 26-2-99 on the file of the 1st respondent; and consequently direct the respondent-management to reinstate the petitioner into service with all consequential benefits, back wages and other benefits.

The Court made the following :

ORAL ORDER:

This Writ Petition is filed by the workman being aggrieved by the Award dated 26-2-1999 made in I.D.No.238 of 1995 on the file of the Industrial Tribunal-cum-Labour Court, Anantapur, wherein the claim petition filed by the workman under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') was dismissed.

It is the case of the petitioner that he was appointed to look after the sales promotion work with effect from 19-5-1986 in the 2nd respondent-company. He was subsequently promoted as a Salesman with effect from 10-5-1989. Thereafter, his services were terminated illegally with effect from 21-9-1993. On a representation made by him, he was reappointed as a Sales Representative in the respondent-company by letter dated 23-12-1993 and he was put on probation for six months. On 20-10-1994 a letter was said to have been issued extending his probation. However, on 15-11-1994 he was issued with a letter stating that his probation was extended for a period of one month by letter dated 20-10-1994 and the same would be completed by 16-11-1994; therefore, he would be relieved from service on 16-11-1994 after working hours. Aggrieved by the said letter, he raised an industrial dispute under Section 2-A(2) of the Act and the same was taken on file in I.D.No.238 of 1995 on the file of the Industrial Tribunal-cum-Labour Court, Anantapur, which was dismissed. According to the petitioner, the Labour Court without properly appreciating the evidence on record confirmed the order passed by the respondent-management. The same is arbitrary and illegal.

A detailed counter affidavit has been filed by the 2nd respondent denying the allegations made by the petitioner and asserting *inter alia* that the very appointment of the petitioner was subject to completion of probation and the probation of the petitioner was extended on 14-7-1994 and further on 20-10-1994. As his performance was unsatisfactory, by letter dated 15-11-1994 he was relieved from services. Therefore, it cannot be said that there was no extension of probation. In view of the same, the Award of the Labour Court is just and proper and does not call for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record including the impugned Award.

At the outset, I am of the opinion that the Labour Court has not properly appreciated the evidence on record. It is the case of the management that the petitioner was appointed as a Sales Representative by letter dated 23-12-1993. Clause (2) of the said letter states that the petitioner was put on probation for a period of six months from the date of his joining and unless specifically confirmed in writing, the said probation will be deemed to have been extended for a further period of three months. From Clause (3), it is clear that during or at the end of the probation period, if the petitioner's services are not found suitable, his services may be liable for termination without any notice or without assigning any reasons. Though there is a deeming provision that unless and until the probation is declared, it must be deemed that it has been extended for a further period of three months after six months period, according to the respondent-management, it was extended for the first time within three months by a letter dated 14-7-1994 for a period of three months, which is in dispute. Thereafter, again on 20-10-1994, the probation was extended for one month with effect from 17-10-1994 to 16-11-1994. While so, the impugned letter dated 15-11-1994 was issued relieving the petitioner from service with effect from 16-11-1994 without furnishing any reasons and asking him to collect final settlement dues. It was categorically asserted by the workman that he never received the letter dated 14-7-1994 extending his probation. Even in the letter dated 20-10-1994 it was stated that his probation was extended for a further period of one month from 17-10-1994 to 16-11-1994 and during the extended period of probation also his performance was found not satisfactory.

Therefore, the only question that remains for consideration is whether the petitioner was issued with the letter dated 14-7-1994 extending his probation from 17-7-1994 to 16-10-1994 and if the said letter is not issued and received by the petitioner, what would be effect in law ?

As stated above, as per clause (2) of the letter of appointment dated 23-12-1993, unless and until the services of the petitioner are confirmed at the end of six months, it must be deemed that it has been extended for another period of three months automatically. The letter dated 14-7-1994 has not been marked as one of the documents before the Labour Court to show that the probation of the petitioner was extended for three months. In fact, what are the contents of the letter dated 14-7-1994 are not revealed. The petitioner has categorically denied receiving of any such letter. During the course of arguments in this Writ Petition, the learned counsel for the petitioner was granted time to produce the letter dated 14-7-1994. But, the learned counsel for the petitioner stated that the management is not able to trace out the record in view of some bifurcation of office etc., and submitted that it will not possible to produce such a letter. From this, the only inference that can be drawn is that the management has wantonly concealed the said letter by not producing the same either before the Labour Court or this Court. In the face of the averments made by the petitioner that he never received such a letter and it was not borne on record, it must be deemed that it is not in existence. Therefore, it has to be been seen as to whether three months have lapsed after completion of six months of service by the petitioner and whether the probation was extended for 3 months after completion of 6 months service. Admittedly, the petitioner was appointed through letter dated 23-12-1993 and he reported for duty on 17-1-1994 and the first 6 months expired by 16-7-1994. Further, the deemed period of probation as per clause (2) of the letter dated 23-12-1993 lapsed on 15-10-1994. Therefore, the period of probation as contended by the petitioner was not extended within the period of 9 months. The letter dated 20-10-1994 was issued extending the period of probation for a period of one month i.e. from 17-10-1994 till 16-11-1994, as if the earlier period was extended till 16-10-1994 under the alleged letter dated 14-7-1994, which is not in existence. As such, the probation of the petitioner was neither extended within first six months nor within the extended period of three months thereafter nor even as per the letter dated 20-10-1994 it was extended within time i.e. before 17-10-1994 for a period of one month. The story of issuance of the letter dated 14-7-1994 is only for the purpose of

convenience to support of the case of the management. Therefore, the contention of the petitioner that his services were not extended within the period of probation, looking from any angle, cannot be said to be incorrect. The Labour Court went wrong in the absence of the letter dated 14-7-1994 extending the period of probation and held that the petitioner's services were extended from time to time. The stand of the respondent that since the services of the petitioner were not satisfactory, he was relieved and therefore, the question of termination does not arise is erroneous. Once the term of probation is fixed, unless and until it is extended before the said period, any extension made thereafter is not recognized under the law. The probation of the petitioner stood completed without any interruption or extension. Assuming, in the absence of declaration of probation, the petitioner is said to be on deemed extended probation for three months, even during that period of three months, the probation was not extended. Therefore, in the absence of letter dated 14-7-1994 the probation of the petitioner was not said to be extended during the period of 6+3 = 9 months. There is no mention in the letter of appointment dated 23-12-1993 that even after completion of 6+3=9 months probation period, the employer can extend the probation as he thinks fit. As such, it must be deemed that the petitioner has completed the probation period and after the completion of probation period, any extension or termination is arbitrary and illegal. In this regard, it is relevant to refer to the decision reported in **STATE OF GUJARAT v. AKHILESH C. BHARGAV**

> "We are of the view that the rules read with instructions create a situation as arose for consideration by this Court in the case of State of Punjab v. Dharam Singh (1968) 3 SCR 1: (AIR 1968 SC 1210). The Constitution Bench of this Court in that case interpreted the Punjab Educational Service (Provincialised Cadre) Class III Rules and found that there was a maximum limit of three years beyond which the period of probation could not be extended. When an officer appointed initially on probation was found to be continuing in service beyond three years without a written order of confirmation, this Court held that it tantamounts to confirmation. In view of what we have stated above we are in agreement with the High Court about the combined effect of the rules and instructions. We hold that the respondent stood confirmed in the cadre on the relevant date when he was discharged……

It is also relevant to refer to the decision of the Supreme Court in **MUNICIPAL CORPORATION v. ASHOK KUMAR MISRA** wherein it was held as under:

> "6. Exercise of the power to extend the probation is hedged with the existence of the rule in that regard followed by positive act of either confirmation of the probation or discharge from service or reversion to the substantive post within a reasonable time after the expiry of the period of probation. **If the rules do not empower the appointing authority to extend the probation beyond the**

prescribed period, or where the rules are absent about confirmation or passing of the prescribed test for confirmation of probation then inaction for a very long time may lead to an indication of the satisfactory completion of probation……." (emphasis supplied)

The learned counsel for the petitioner strenuously contended that the management has adopted unfair labour practice. In fact, when he was appointed earlier on 19-5-1986, his services were illegally terminated on 21-9-1993 and when the petitioner made a representation ventilating his grievance, to avoid complications, the management issued letter dated 23-12-1993 appointing the petitioner afresh and putting him on probation again. To wreck vengeance and to get rid of his services, they have further created a letter dated 20-10-1994 to show that his probation was extended by a letter dated 14-7-1994, which was never in existence. It may not be necessary to go into this aspect again in view of the above findings.

In the light of the above discussion, the Award made by the Labour Court is liable to be set aside and accordingly set aside. The respondent-management is directed to reinstate the petitioner into service as a permanent employee of the company with continuity of service, attendant benefits and full back wages.

Accordingly, the Writ Petition is allowed. No order as to cost.

22-8-2005

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